

### REMARKS

A telephone conference was held between Examiners Rose and Wong and the undersigned on March 13, 2007. No agreement was reached. Applicants thank the Examiners for their time. A summary of the telephone conference has been previously filed.

Applicants have thoroughly considered the Examiner's remarks during the telephone conference and in the Final action. Applicants respectfully request reconsideration of the application in light of above amendments and the following remarks. Claims 1-12 have been canceled. Claims 13 and 14 are presented in the application for reconsideration. It is noted that claims 13 and 14 were NOT discussed during the telephone conference.

#### Claim Rejections - 35 U.S.C. § 103

Claims 13-14 stand rejected under 35 U.S.C. 103 (a) as being obvious over U.S. Patent No. 5,659,614 to Bailey, III (Bailey) in view of U.S. Patent No. 6,049,874 to McClain et al. (McClain).

Claim 13 recites a method including, among other things:

selectively delivering the portable computer readable medium to a user of the destination computer based on an amount of data in the one or more files to be transferred, wherein **the portable computer readable medium is physically delivered** to the destination user when the amount of data to be transferred is greater than or equal to a target amount, and wherein the one or more **files are transferred** from the first computer to the second computer **via a communication network** when the amount of data to be transferred is less than the target amount. (emphasis added).

Thus, claim 13 recites a method including backup file transfer **via a communication network AND via physical delivery**, i.e. two different types of transfer are recited.

The Examiner has pointed to the following as making this recital obvious:

selectively delivering the portable computer readable medium to a user of the destination computer based on an amount of data in the one or more files to be transferred (Refer to claim 1, wherein this limitation is substantially the same/or similar), wherein the portable computer readable medium is physically delivered to the destination user when the amount of data to be transferred is greater than or equal to a target amount (Refer to claim 1, wherein this limitation is substantially the same/or similar), and wherein the one or more files are transferred from the first computer to the second computer via communication network when the amount of data to be transferred is less than the target amount (Refer to claim 1, wherein this limitation is substantially the same/or similar, Bailey).

However, the **physical delivery** recital is not recited in the method of claim 1 so that the Office action does not address this aspect of the method of claim 13. In any case, both Bailey and McClain *only* disclose electronic backups via a network. Neither reference mentions **PHYSICAL DELIVERY** via a portable medium when the files exceed the target amount in addition to backups via a communications network. Thus, claim 13 should be allowed.

Claim 14 further recites that "the originating user determines the target amount." The Examiner cites the following:

Regarding claim 14, the combination of Bailey in view of McClain teaches wherein the originating user determines the target amount (column 11, lines 35-38, wherein finite size is interpreted to be limited or restricted in nature, Bailey).

However, column 11, lines 35-38 of Bailey are as follows:

and places that file in the transmission file. The transmission file is a file of finite size determined by the channel capacity analysis of step 502 such that less than all the files to be transmitted may fit within the transmission file. When

This section of Bailey does not indicate that the transfer amount is determined by the originating user, as recited by claim 14. Instead, it says that the finite size is determined by channel capacity analysis. McClain does not address this.

Further, claim 14 recites that the originating user determines whether files are transferred via a communication network OR physically via a portable medium, based on their size. Bailey and McClain only teach electronic transfer via a network based on channel capacity. Thus, claim 14 should be allowed.

In view of the foregoing, applicants submit that independent claims 13 and 14 are allowable over the cited art.

It is felt that a full and complete response has been made to the Office action and, as such, places the application in condition for allowance. Such allowance is hereby respectfully requested. Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited invention. The fact that applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating applicants' agreement therewith.

**The applicants wish to expedite prosecution of this application. If the Examiner deems the claims as amended to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the claims in condition for allowance.**

The Commissioner is hereby authorized to charge any deficiency or overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,

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